



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. MCTIGUE
DIRECTOR

March 7, 1990
AO-90-06

Lyn Utrecht, Esquire
Manatt, Phelps,
Rothenberg & Phillips
1200 New Hampshire Avenue, N.W.
Suite 200
Washington, D.C. 20036

Dear Ms. Utrecht:

This letter is in response to your request for advisory opinion on behalf of the Prudential-Bache State & Local Good Government PAC (the "Committee").

You have stated that in November 1989, the Committee filed a Statement of Organization with this office. The Committee was established by employees of Prudential-Bache to make contributions in connection with state and local elections in a number of states, including Massachusetts. All receipts and disbursements -- even those related to activity in states other than Massachusetts -- will be reported on the appropriate Massachusetts campaign finance reports, and no contributions will be accepted unless they comply with Massachusetts.

You have stated that Prudential-Bache routinely permits its employees to use the name of the corporation without charge in connection with other non-work voluntary employee activities, such as the softball team, football team, soccer team and running team. Corporate facilities are utilized to advertise these activities and employees participating in them use the Prudential-Bache name on T-shirts, flyers, posters, etc. You have stated that with sanctioned employee activities such as this, the corporation does not prohibit the use of the name Prudential-Bache or charge employees for the use of the name.

You have inquired whether it would be permissible under Massachusetts law for the Committee to use the name "Prudential-Bache" without charge, given the corporation's practice of permitting employees to use the name "Prudential-Bache" without charge for other employee, non-work, non-political activities.

Section 8 of M.G.L. c.55 states, in pertinent part:
"[n]o business corporation incorporated under the laws of or

doing business in the commonwealth . . . shall directly or indirectly give, pay, expend or contribute, or promise to give, pay, expend or contribute, any money or other valuable thing for the purpose of aiding, promoting or preventing the nomination or election of any person to public office, or aiding or promoting or antagonizing the interest of any political party."

Section 1 of M.G.L. c.55 defines "contribution", inter alia, as "any discount or rebate not available to other candidates for the same office and to the general public."

In analyzing these sections of the campaign finance law, the Attorney General, in an opinion dated November 6, 1980 (the "Opinion"), stated:

The exclusive use of corporate names and trademarks is protected by Massachusetts statutes. There also exists at common law the right to protect the use of a business name. Trade names and trademarks have been held to constitute valuable property. I am therefore of the opinion that insofar as a corporation would enforce its right to the exclusive use of its name, trademark or logo against other entities, it grants a thing of value if it allows their use by a committee or other organization. A business corporation may allow a multicandidate committee to use its name, trademark, or logo without compensation, only to the extent that it would not prohibit such use by any other individual or entity. (citations omitted; emphasis added.)

It is therefore the opinion of this office that it would be impermissible under Massachusetts law for the Committee to use the name "Prudential-Bache" without charge, unless Prudential-Bache allowed such use by any other individual or entity and such use was not limited to the corporation's practice of permitting employees to use the name "Prudential-Bache" without charge for other employee, non-work, non-political activities. It is the further opinion of this office that the Committee must be charged the same fee for the use of the name "Prudential-Bache" as would be charged to any other individual or entity unrelated to the corporation. Presumably such fee would be the fair market value of the name, rather than a token amount.

You have also inquired whether the provisions of section 6 of M.G.L. c.55, particularly the contribution limitations, apply to contributions made by the Committee to candidates outside Massachusetts if those contributions are made from the same account as contributions to Massachusetts candidates and if the non-Massachusetts contributions are reported on Massachusetts campaign finance reports.

Section 1 of M.G.L. c.55 defines a political committee

as "any committee, association, organization or other group of persons, including a national, regional, state, county or municipal committee which receives contributions or makes expenditures for the purpose of influencing the nomination or election of a candidate, or candidates" The second paragraph of section 6 of M.G.L. c.55 provides that only "duly organized" political committees may receive and expend money for the purpose for which they were organized (including giving to Massachusetts state, county and/or municipal candidates). Section 5 of M.G.L. c.55 delineates those steps which must be taken in order for a committee to become "duly organized."

It has been the long-held position of this office that political committees organized pursuant to the provisions of M.G.L. c.55 are organized with the purpose (express or implied) of benefiting Massachusetts state, county and municipal candidates, and that any activity designed to benefit other classes of candidates must be therefore limited. For example, this office has permitted such duly organized political committees to make a limited number of contributions to persons running for offices other than at the state, county or municipal level in Massachusetts (see AO-85-10). It must be emphasized that this office's jurisdiction in this matter evolves from its administration of multicandidate political committees organized under the laws of the Commonwealth rather than the type of "candidate" to whom such political committees choose to give; the office exercises separate jurisdiction over Massachusetts state, county and municipal candidates. The Commonwealth's interest in regulating and administering multicandidate committees is premised on its interest in controlling corruption and the appearance of corruption in the political process. This interest lies at the heart of activities of each multicandidate committee which has chosen to organize pursuant to the laws of the Commonwealth, whether such activities are conducted within state borders or outside.

Historically, no statutory contribution limits existed on what a multicandidate committee was permitted to contribute to a candidate's committee. Individual contributions by multicandidate committees to state, county and municipal candidates as well as federal and out-of-state candidates were therefore without limitation. By Chapter 519 of the Acts of 1987, however, limits were placed on the amount a multicandidate political committee was permitted to give to a candidate. Section 6 of M.G.L. c.55 now provides that "a political committee not organized on behalf of an individual candidate . . . may contribute to the campaign fund of a candidate; provided, however, that the aggregate of all such contributions for the benefit of any one candidate and the non-elected political committee organized on such candidate's behalf shall not exceed in any one calendar year the sum of one thousand dollars." The

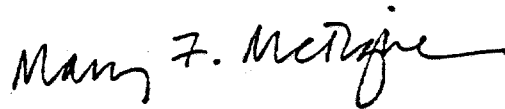
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Legislature chose not to exempt contributions by multicandidate committees to persons running for office at the federal level or outside of Massachusetts. It is therefore the opinion of this office that the Committee, as a multicandidate committee organized under Massachusetts law, must abide by all the requirements of M.G.L. c.55, including those requiring the disclosure of all contributions and all expenditures as well as those setting contribution limitations.

This opinion has been rendered solely on the basis of the representations made in your letter and solely in the context of M.G.L. c.55.

Please do not hesitate to contact this office should you have any additional questions.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Mary F. McTigue", with a stylized flourish at the end.

Mary F. McTigue
Director

MFm/wp